



AGENDA DATE: 4/21/99

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark NJ 07102

IN THE MATTER OF THE REQUEST OF)	ENERGY
JERSEY CENTRAL POWER & LIGHT)	
COMPANY, DOING BUSINESS AS GPU)	
ENERGY, FOR THE ESTABLISHMENT OF)	<u>ORDER ADOPTING</u>
STANDARDS FOR THE CONDUCT OF)	<u>AUCTION STANDARDS</u>
THE SALE OF THE OYSTER CREEK)	
NUCLEAR GENERATING STATION)	DOCKET NO. EM99020113

(SERVICE LIST ATTACHED)

BY THE BOARD:

By Petition dated February 24, 1999, Jersey Central Power & Light Company, d/b/a GPU Energy (GPUE or Company) requested the establishment of standards for the conduct of the sale of the Company's Oyster Creek Nuclear Generating Station (Oyster Creek). On February 19, 1999, GPUE announced that it was renewing its efforts to sell Oyster Creek in response to the emergence of an active market for nuclear generating stations and the possibility of potential buyers for Oyster Creek. It is the Company's intention to initiate a flexible, competitive sales process to solicit offers from potential purchasers. The Company is seeking to send detailed information packages to potential buyers.

The Company also questions whether the requirements of Section 11.b of the recently enacted "Electric Discount and Energy Competition Act" (Act), P.L. 1999, c. 23, would apply to the solicitation of bids for Oyster Creek. Section 11.b provides, in pertinent part that:

[p]rior to the commencement by an electric public utility. . . of any solicitation of bids for the sale of generating assets subject to [stranded cost] recovery. . . , the [B]oard shall establish standards for the conduct of such sale by the utility".

The Company argues that, depending on the interpretation of the statutory

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language of the Act, Oyster Creek may not today be deemed to be subject to stranded cost recovery, at least until the issuance of final Orders in the pending restructuring dockets providing for such recovery as requested by the GPUE. The Company further argues that Board's Order Adopting Auction Standards dated June 16, 1998 in Docket Nos. EX94120585Y , EO97070457, EO97070460, EO97070463 and EO97070466, was, by its terms, limited to the sale of the Company's non-nuclear generation plants. To avoid future dispute as to the applicability of, and compliance with, the statutory provision, the Company is requesting that the Board establish such standards now.

The Company asserts that the sale of Oyster Creek would be in furtherance of the Board's stated desire for utilities to voluntarily divest their generation assets. Moreover, GPUE argues that such a sale would be consistent with the intent of the Company and its Pennsylvania affiliates, in light of the ongoing restructuring of the electric power industry in New Jersey and Pennsylvania, to exit the generation business and to focus on their core utility responsibilities to provide open-access transmission and distribution services to the public.

The Company further asserts that compliance with such standards should satisfy any requirements with respect to advertising, and seeks confirmation that the Board's advertising requirements set forth in N.J.A.C. 14:1-5.6(b) would not otherwise apply to any ensuing sale of Oyster Creek.

GPUE also asserts that prompt Board action with respect to the establishment of such standards is necessary. The Company would like to send detailed information packages to potential bidders in the very near future in order to take advantage of favorable market conditions, and make contractual commitments in the fall of 1999 for nuclear fuel and related services.

By letter dated March 29, 1999, the Division of the Ratepayer Advocate (Advocate) submitted comments in response to GPUE's Petition. The Advocate asserts that the recent enactment of the Act renders the existing Auction Standards inadequate and unsuitable for use in the conduct of the sale of Oyster Creek. The Advocate also asserts that, since the issue of stranded cost recovery has not yet been decided by the Board, specific Auction Standards for Oyster Creek are needed pursuant to the Act.

The Advocate recommends that the Board adopt Auction Standards for Oyster Creek which embody the requirements specifically set forth in Section 11.c of the

Act¹, and provides its comments with regard to the following areas: (1) the sale reflects the full market value of the assets; (2) the sale is otherwise in the best interest of the electric public utility's ratepayers; (3) the sale will not jeopardize the reliability of the electric power system; (4) the sale will not result in undue market control by the prospective buyer; (5) the impacts of the sale on the utility's workers have been reasonably mitigated; and (6) the sale process is consistent with the standards established by the Board pursuant to Section 11.b of the Act.

At its agenda meeting on March 31, 1999, the Board determined that a process similar to the one employed for the establishment of Auction Standards for the conduct of the sale of non-nuclear generation facilities be utilized for Oyster Creek as well. By letter from the Board Secretary, the Board released proposed Auction Standards for Oyster Creek for comment by interested parties by April 7, 1999.

With the exception of the previously submitted comments by the Advocate², only GPUE submitted comments in this matter. In its letter dated April 8, 1999, GPUE asserts that the proposed Auction Standards are consistent with the Act and provide an appropriate framework for the Company to sell Oyster Creek. The Company argues that the proposed Auction Standards recognize that there may be a limited market for nuclear power plants approaching decommissioning, which is a reality that must be taken into account as GPUE moves forward with its sales effort.

The Company disagrees with the Advocate's assertion that the Act renders the existing Auction Standards inadequate and unreasonable, noting that the Advocate's comments are without foundation. The Company argues that the proposed Auction Standards are consistent with the Act, and that each area for Board inquiry set forth in Section 11.c is addressed in the proposed Auction Standards.

Discussion

The Board previously established Auction Standards and Review Criteria (Auction Standards) for both GPUE and Rockland Electric Company (RECo) in its Order Adopting Auction Standards dated June 16, 1998 in Docket No. EX94120585Y et. al. That Order adopted standards for the divestiture by both GPUE and RECo of their non-nuclear generation facilities only, as GPUE had already sought a buyer for its Three Mile Island

¹ Section 11.c of the Act requires an electric public utility to file for and obtain approval by the Board of any sale of generating assets subject to stranded costs recovery and establishes criteria to be used in reviewing said filing.

² By letter dated April 9, 1999, the Advocate resubmitted its prior comments.

Unit 1 Nuclear Generating Facility³ and indicated that it was considering, among other options, the possible retirement of Oyster Creek. RECo does not have any ownership interest in any nuclear facilities.

The Auction Standards were adopted following a process established by the Board in its Order Establishing Processes and Procedures dated January 23, 1998 in Docket No. EX94120585Y et. al. That process provided for interested parties to discuss the divestiture plans of GPUE and RECo, and to provide input into the development of standards that would address potential areas of concern. In addition to GPUE and RECo, the Division of the Ratepayer Advocate, New Jersey Citizen Action and Board Staff participated in the development of the Auction Standards which were adopted by the Board.

The Board has carefully reviewed the comments submitted by the Advocate and GPUE. We agree with the Advocate's description of the Board's jurisdiction over the sale of generation assets by New Jersey utilities and, in particular, that Sections 11.b and 11.c of the Act are applicable to any proposed sale of Oyster Creek by the Company. We **FIND** that the proposed Auction Standards are consistent with requirements of the Act and that the individual requirements set forth in the Act are addressed in the proposed Auction Standards. We emphasize that the specific criteria enumerated in the Act will be evaluated and addressed by the Board during our review of any proposed sale of Oyster Creek in the event GPUE is successful in obtaining a qualified purchaser for the facility.

Having reviewed the Company's initial request, the comments of the Advocate and GPUE, and our June 16, 1998 Order Adopting Auction Standards, we believe that our existing Auction Standards, as modified herein, continue to be appropriate and can be used to govern the conduct of the sale of Oyster Creek. We recognize the unique status of Oyster Creek, particularly with regard to the age and type of generation facility and the fact that it is a single unit being offered for sale, all of which may result in a more limited market than exists for non-nuclear units. In light of these unique circumstances, the Auction Standards must also address the issue of decommissioning of Oyster Creek at the end of its useful operating life. Based upon the foregoing, we **HEREBY ADOPT** the following Auction Standards, applicable to the divestiture process of GPUE with regard to Oyster Creek, which contain specific modifications to the standards previously adopted for the divestiture of GPUE's and RECo's non-nuclear generation

³ By petition dated February 11, 1998, in Docket No. EM98121409, GPUE is requesting Board approval of the sale of the Company's interest in TMI-1, wherein the Company asserts that, commencing in 1997 and continuing into 1998, GPU, Inc. publicly announced its willingness to consider selling TMI-1 and, through its agent, contacted a number of utility companies qualified to purchase a nuclear generating station.

facilities:

1. The auction process must be designed to foster competition among bidders, ensure maximum sales price, thereby minimizing stranded costs, and encourage bidder flexibility. The process must be designed in a way to maintain necessary confidentiality in order to restrict the possibility of gaming and to maintain an optimal situation for the development of a comprehensive energy supply market for competition. The process must also consider the costs incurred. The auction should be structured to maximize the sale price while reasonably managing costs, administrative and otherwise.
2. Bidder qualifications should be reasonable and not unduly restrictive. Qualifications may include such criteria as financial capability; regulatory or other legal requirements, experience in ownership, operation and decommissioning of nuclear generating facilities; labor and industrial relations experience; and relevant safety, environmental and community involvement track records. Prospective bidders must be required to indicate the intended use of Oyster Creek.
3. Any "short list" or final bidding group must strive to include enough participants to promote competition, to the extent practicable recognizing that there may be a limited market for nuclear power plants approaching decommissioning.
4. GPU Energy must ensure that access to all relevant information is provided to all prospective bidders (this may include but will not necessarily be limited to plant and site data; transmission and fuel supply infrastructure; interim buyback requirements, if any; State and federal regulatory requirements; relevant market information, environmental, decommissioning, and other liabilities; labor responsibilities; industry and market analysis). Bidders should be provided with appropriate access to relevant documentation and key personnel to perform necessary due diligence investigations. The bidders should also be informed about regulatory and commercial terms of sale in order to make informed decisions and correctly analyze the value of the assets being offered.
5. GPU Energy, upon completion of the auction, and as part of its request for approval, will be required to submit a market power analysis for regulatory review. GPU Energy must demonstrate that the sale of the Oyster Creek facility will not create or enhance market power in the relevant market,

and should take into account the effect of any identified load pockets. The Board will give particular attention to any buyer which currently owns or controls electric generation assets in the State of New Jersey.

6. GPU Energy must demonstrate that it has adequately provided for system reliability and the provision of safe, adequate and reliable service post-divestiture. GPU Energy must demonstrate that there will be an entity or structure in place for it to meet the reasonably anticipated load requirements (including basic generating service) through retail phase-in, and provide local area support, if necessary. The buyer should commit to adhere to requirements of the local control area independent system operator entity and all applicable operational and reliability standards.

7. Absent a showing by GPU Energy that retention of such liabilities provides a substantial risk-adjusted benefit to ratepayers, all on-site environmental and decommissioning liabilities associated with Oyster Creek shall be assumed by the purchaser unless otherwise required by applicable local, State and federal laws. The buyer shall comply with all safety and environmental standards as embodied in existing State and federal statutes and regulations and associated permits, and as subsequently modified through legislative or regulatory actions.

8. All bidders on the short list, or in the final bidding group, shall be required to submit to GPU Energy, on a confidential basis, a disclosure of all formal notices of violation of local, State and federal environmental permits applicable to the ownership or operation of electric generating facilities for the past five year period. The safety and environmental performance record for the proposed buyer shall be submitted and made public as part of the petition by GPU Energy for approval of the sale.

9. The divestiture petition must include a reasonable transition plan, plus a system of reporting such plans, for the incumbent generation workforce, including, but not limited to, assurances that existing pension and other post-retirement benefits and entitlements accrued through the date of sale are protected, and requirements that the buyer assume any existing collective bargaining agreements covering union employees associated with Oyster Creek. In addition, GPU Energy is expected to assist employees (both union and non-union) in obtaining positions with the buyer.

10. Upon completion of the auction process, and with its petition for approval of the sale, GPU Energy shall be required to submit a complete and

accurate summary of the auction proceedings and outcome. GPU Energy must be prepared to provide to the Board in writing the rationale behind the exclusion of any prospective bidder at each stage of the action process.

The Board **FINDS** that Section 11.b of the recently enacted electric restructuring legislation clearly requires the establishment of standards for the sale of divested generation assets which are eligible for stranded cost recovery. The sale of Oyster Creek or any other generation assets which GPUE or any other New Jersey electric utility proposes to sell will remain subject to the requirements of Sections 11.b and 11.c. The request by GPUE for the Board to adopt standards relating to Oyster Creek is, therefore, appropriate in this instance.

With regard to the Company's request that the Board waive the advertising requirements set forth in N.J.A.C. 14:1-5.6(b) with respect to the conduct of the sale of Oyster Creek, we note that a similar request was not made for the conduct of the sales of either TMI-1 or the Company's non-nuclear generating facilities, nor was such a waiver granted. We further note that GPUE has two petitions pending before us requesting Board approval of the sales of both TMI-1 and the Company's non-nuclear generating facilities, in Docket Nos. EM98121409 and EM99020067, respectively, wherein specific requests for the Board to waive its advertising rules are made. We will, therefore, defer our decision on the Company's request until such time as a petition may be filed for approval of the sale of Oyster Creek, at which time GPUE can again request such waiver.

DATED: 4/21/99

BOARD OF PUBLIC UTILITIES

BY:

_____**SIGNED**_____
HERBERT H. TATE
PRESIDENT

_____**SIGNED**_____
CARMEN J. ARMENTI
COMMISSIONER

_____**SIGNED**_____
FREDERICK F. BUTLER
COMMISSIONER

ATTEST: _____SIGNED**_____**
MARK W. MUSSER

SECRETARY